1		The Honorable John E. Bridges Hrg set 2/4/05 @ 9:00 a.m.
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7	STATE OF WASH	HINGTON
8	CHELAN COUNTY SUPERIOR COURT	
9	TIMOTHY BORDERS, et. al.,	NO. 05-2-00027-3
10	Petitioners,	SECRETARY OF STATE'S
11	V.	RESPONSE TO WASHINGTON STATE
12	KING COUNTY, et. al.,	DEMOCRATIC CENTRAL COMMITTEE'S MOTION TO
13	Respondents,	DISMISS CAUSES FOR ELECTION CONTEST
14	WASHINGTON STATE DEMOCRATIC	ELECTION CONTEST
15	CENTRAL COMMITTEE,	
16	Intervenors,	
17	LIBERTARIAN PARTY OF WASHINGTON STATE, et al.,	
18		
19	Intervenors.	
20	COMES NOW Respondent, Sam Reed, as Secretary of State of the state of	
21	Washington ("Secretary Reed" or "the Secretary"), by and through the undersigned counsel, and responds as follows to the Washington State Democratic Central Committee's Motion to Dismiss Causes for Election Contest ("Motion"). Among the issues raised in this Motion is a matter as to which the Court expressly sought input of counsel at the hearing held on January	
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2526	20, 2005: the effect of RCW 29A.68.020(5), relating	ng to illegal votes. The Secretary provides

the following brief analysis as to this point, without wishing to imply any views as to other matters raised in the Motion.

That statute lists illegal votes as one of five causes for an election contest. It then further describes the concept of illegal votes and their use in a contest action as follows:

- (a) Illegal votes include but are not limited to the following:
 - (i) More than one vote cast by a single voter;
- (ii) A vote cast by a person disqualified under article VI, section 3 of the state [c]onstitution.
- (b) Illegal votes do not include votes cast by improperly registered voters who were not properly challenged under RCW 29A.08.810 and RCW 29A.08.820.

RCW 29A.68.020(5).

Intervenors, by their present motion, contend that Petitioners must establish, as to any votes that they contend are "illegal" by reason of the voters' qualifications, that Petitioners challenged the registration prior to the election under the statutes cross-referenced in RCW 29A.68.020(5)(b). Motion at 11-12.

The Secretary submits that this statute should be read in a more limited fashion, to give effect both to what the statute *includes* as well as what it *excludes*. As Intervenors note, state law includes a number of qualifications to register to vote, not all of which are specifically mentioned in RCW 29A.68.020(5). Motion at 12. The statute does specifically mention, for the purpose of including within the scope of "illegal votes," multiple votes cast by the same person and votes cast by individuals rendered ineligible by virtue of a specific constitutional section. That section bars from the franchise convicted felons (until their civil rights are restored) and those individuals judicially declared mentally incompetent. Const. art. VI, § 3. Since voters in those categories, who are categorically ineligible, are specifically *included* within the scope of the illegal voting concept, the language that follows should not be read to *exclude* them. Had the Legislature not meant to specifically include those categories of votes,

1	without regard to paragraph (5)(b), it would not have been necessary to treat them differently	
2	than other kinds of illegal votes by specifically mentioning them.	
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4	DATED this day of January, 2005.	
5	ROB McKENNA	
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15	of State Sam Reed	
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